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No. 943

IN THE

Supreme Court of the United States

October Term, 1944.

JOHN WILLARD THOMPSON AND ANGY THOMAS CASTEN,
Petitioners

VERSUS

UNITED STATES OF AMERICA,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE FIFTH CIRCUIT, AND SUPPORTING BRIEF

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To the Honorable The Supreme Court of the United States:

Come now John Willard Thompson and Angy Thomas Casten, hereinafter called petitioners, and petitioning for writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit, respectfully show:

STATEMENT OF THE CASE

On January 24, 1944, an indictment in two counts was returned against your petitioners and others into the District Court of the United States, for the Northern District of Texas. The first count charged petitioners and others with having received and concealed goods and chattels consisting of five hundred cases of whiskey of the approximate value of $17,100.00, which had theretofore been stolen from an interstate shipment of freight moving from the State of Illinois to the State of New Mexico. The second count charged petitioners and others with having conspired to so receive and conceal such stolen merchandise, knowing the same to have been stolen.

On the 28th day of January, 1944, this cause was tried and petitioners were found guilty on each of said counts, and the court sentenced each of them to serve five years generally in a United States penitentiary to be selected by the Attorney General (Tr. 15-17). Petitioners seasonably perfected their appeal to the United States Circuit Court of Appeals for the Fifth Circuit, and on December 9, 1944, the cause was affirmed by said court (Tr. 66). They filed their petition for rehearing January 5, 1945, which was by said court overruled January 13, 1945, without written opinion (Tr. 74).

STATEMENT AS TO JURISDICTION

This case originated in the District Court of the United States, for the Northern District of Texas. From judg-

ment and a sentence of guilt imposed upon them by that court they duly appealed to the United States Circuit Court of Appeals for the Fifth Circuit; thereupon this cause being affirmed by said court, they filed their petition for rehearing, which was also overruled.

Jurisdiction of this case is conferred upon the Supreme Court of the United States by Section 347-a, U. S. C. A., Title 28, and is sanctioned by subsection 3 of paragraph 5(d) of Rule 38 of the Supreme Court of the United States.

QUESTIONS PRESENTED

1.

Whether the evidence was sufficient to support a conviction.

2.

Whether the evidence was such as to require a charge upon circumstantial evidence as to both counts.

3.

Whether the failure of the court to charge the jury that they must first believe the appellants knew the whiskey, which they were charged with having received and concealed, had been stolen before they could vonvict, is error of such fundamentals and obvious nature and so harmful to the fundamental rights of petitioners as to

permit and require this Honorable Court to take cognizance of it, although not originally assigned as error.

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT

1.

In holding that these petitioners were found to have been in possession of the stolen whiskey and that it was incumbent upon petitioners to explain their possession thereof (Tr. 67), the court misinterpreted the facts and placed a burden upon petitioners contrary to all laws, the Constitution of the United States and many years of precedents by this Honorable Court, which forbids requiring proof of innocence on the part of defendants in criminal cases.

2.

In holding that petitioners were not entitled to a charge on circumstantial evidence duly requested, the court below erred, since there was no direct testimony connecting the petitioners with the alleged offense.

3.

In refusing to take cognizance of the fundamental error of the trial court in his failure to charge that before petitioners could be convicted for the offense alleged they must have known that the whiskey in question was stolen, the

court committed an error prejudicial to the rights of petitioners, because such failure to so charge the jury is error of such fundamental nature, that it would not only permit but require the court to take cognizance of and correct same.

In so ruling upon each of the questions the United States Circuit Court of Appeals decided an important question of law in connection with the constitution and laws of the United States, and contrary to the well settled rule of decisions of the Supreme Court of the United States, and particularly in conflict with:

United States vs. Atkinson, 297 U. S. 157, 80 L. Ed. 555;

N. Y. Cent. R. R. Co. Case, 318 U. S. 320, 73 L. Ed., 711;

Brookfield vs. U. S., 272 U. S. 448, 450, 71 L. Ed. 345, 346;

Degan vs. U. S., 271 F. 291 (certiorari denied);

Wolf vs. U. S., 290 F. 738 (certiorari denied);

U. S. vs. Russo, 123 F. (2) 420 (certiorari denied).

WHEREFORE, your petitioners respectfully pray that a writ of certiorari issue to the Honorable The United States Circuit Court of Appeals, for the Fifth Circuit, commanding that court to certify to this court for its review and determination on a day certain a full annd com-

plete transcript of the record and proceedings in the cause numbered and entitled on its docket, No. 10949, John Willard Thompson and Angy Thomas Casten, Appellants, versus United States of America, Appellee, and that the judgment of the Circuit Court of Appeals and that of the trial court be reversed and this cause remanded, and for such other orders as may to this Honorable Court be deemed just and proper.

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